



Jeff Harris, Director

Technology Support Dept., Las Cruces Public Schools
505 South Main, Suite 249, Room 150
Las Cruces, New Mexico 88001
Office: (575) 525-7124 Fax (575) 527 6609

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

Request for Review

Re: Docket no. 02-6

Background:

Las Cruces Public Schools (Las Cruces or LCPS) is appealing USAC's denial of its service substitution request. On February 24, 2012, Las Cruces requested a service substitution for Funding Year 2010 for FRN 2062329.¹ USAC denied the request on April 6, 2012, stating, "The service substitution was received or postmarked after the deadline for submitting requests-i.e. June 30 of the relevant Funding Year for recurring services."² USAC denied the request because LCPS did not meet USAC's administrative procedures. As we will explain below, it was not reasonable for LCPS to meet this arbitrary guideline.

Las Cruces requests that the FCC either instruct USAC to consider our February 24, 2012, service substitution request as timely filed or extend the service delivery deadline for non-recurring services, which will allow LCPS to refile the service substitution request.

Discussion:

When Las Cruces filed its FY 2010 Form 471 it was in the process of transitioning its schools from a leased WAN serviced by OC3 and T1 lines to a leased WAN serviced by Metro Optical Ethernet (MOE) lines. While there was a thoughtful plan to transition from the OC3 and T1 lines that scaled back these lines as the MOE came online, there were delays in the implementation of the MOE. The delays were not caused by any action or inaction of LCPS, but rather were delays in implementation from the vendor. It should be noted that OC3, T1, and MOE are all provided by the same vendor.

¹ See Attachment A for copy of February 24, 2012 service substitution request.

² See Attachment B for copy of April 6, 2012 denial letter from USAC.

By June 30, 2011 the implementation was still ongoing and it was unclear how much additional non-recurring charges LCPS would incur with the install of MOE. It would have been premature for LCPS to file a service substitution at this time because 1) the detailed analysis of what was billed for each service could not be completed, and 2) LCPS would have had to “guess” at the costs associated with the MOE install. If a service substitution had been filed by June 30 another service substitution would have been needed once the final numbers were determined, which would have been administratively inefficient for both USAC and Las Cruces.

Accordingly, LCPS waited until it had enough information and had been charged for all of the non-recurring charges before submitting a service substitution. Some applicants might consider doing an unauthorized service substitution and attempt to invoice USAC for these OC3 and T1 services since the FCC has indicated that an unauthorized service substitution is not grounds for recovery of funds if the service substitution was otherwise allowable under FCC rules.³ In an effort to be fully compliant with FCC rules, Las Cruces decided to follow through with the service substitution once it had adequate information to file the request, only to be denied for missing an administrative deadline.

The denial of this request precludes LCPS from receiving discounts on \$97,393.80 of eligible services provided to eligible entities. Given the budget challenges districts across the country including LCPS are facing, this loss of funding has real consequences and does not serve the public interest. It should also be noted that the net effect of our service substitution would be to reduce our total committed amount by \$218,011.68.

Denying this type of service substitution request incents the applicant to file a request even if it has not yet determined the correct amount to include in the request. We do not believe the FCC wants the applicant to guess on its service substitution request for fear USAC will deny it for missing an administrative deadline.

As you know, the E-Rate program has many different deadlines that must be met. USAC and the FCC have made considerable effort to ensure applicants meet such deadlines. In the Bishop Perry Order, subsequent Global Reconsideration Orders, and current rulemaking proceedings, the FCC has noted how complicated the program is and has streamlined the process to reduce ministerial errors that result in the loss of funding.

However, if you believe USAC acted properly in denying LCPS for not meeting this administrative deadline, we request that you waive USAC’s administrative procedures or grant an extension of our service delivery deadline to allow us to resubmit the service substitution request. We feel this would be consistent with FCC precedent. In DA 10-999 the FCC stated, “. . .we find, consistent with the decision in Canon-McMillan, that non-payment of these invoices is not warranted, given that the applicants missed a USAC procedural deadline and did not violate a Commission rule.” Given that LCPS did simply miss a procedural deadline, it should not lose out on reimbursements in excess of \$70K. Additionally, the FCC has regularly granted extensions of the deadline for delivering non-recurring services, which would be an administrative solution to our problem.⁴

³ See FCC 04-190 (rel. August 4, 2004)

⁴ See DA 12-85 (rel. February 25, 2012)

May 21, 2012

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In closing, we request you remand our service substitution request to USAC or grant a service delivery extension request and direct USAC to reconsider our original request. If you have any questions on this appeal please contact our E-Rate Consultant, Andrew Eisley, using the contact information below:

Andrew Eisley

E-Rate Central

10238 Squires Way

Cornelius, NC 28031

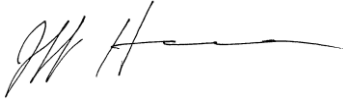
Phone: 516-801-7821

E-mail: ae.review@e-ratecentral.com

Fax: 516-801-7831

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'JW Harris', with a long horizontal flourish extending to the right.

Jeff Harris

Director of Technical Support Services

505 South Main Street, Suite 249

Las Cruces, NM 88001

**Jeff Harris, Director**

Technology Support Dept., Las Cruces Public Schools
 505 South Main, Suite 249, Room 150
 Las Cruces, New Mexico 88001
 Office: (575) 525-7124 Fax (575) 527 6609

February 24, 2012

Service Substitutions
 Schools and Libraries Division – Correspondence Unit
 30 Lanidex Plaza West
 PO Box 685
 Parsippany, New Jersey 07054-0685

Las Cruces Public Schools (LCPS, BEN 143313) is requesting a service substitution and SPIN change/split FRN for 471# 737265, FRN 2062329. The FRN was for installation and recurring charges for Qwest Metropolitan Optical Ethernet (QMOE) service. Installation did not occur according to the assumed schedule, and LCPS incurred much lower charges than projected for QMOE and much higher charges for the OC3 and T1 circuits to be replaced. Therefore, we are requesting a service substitution to move some of the QMOE dollars to cover the equivalent OC3 and T1 circuits. The OC3 and T1 charges are provided by a different branch of Qwest (CenturyLink); therefore, we also need a SPIN change and split FRN.

The charts below explains the changes we are requesting in this service substitution and SPIN Change/split FRN.

From:	
Calculations	Original Amount for QMOE Service
A. Monthly charges (total amount per month for service)	\$49,187.61
B. How much of the amount in A is ineligible?	\$2,006.85
C. Eligible monthly pre-discount amount (A minus B)	\$47,180.76
D. Number of months service provided in funding year	12
E. Annual pre-discount amount for eligible recurring charges (C x D)	\$566,169.12

F. Annual non-recurring charges	\$402,900.00
G. How much of the amount in F is ineligible?	\$16,438.32
H. Annual eligible pre-discount amount for non-recurring charges (F minus G)	\$386,461.68
I. Total funding year pre-discount amount (E + H)	\$952,630.80
J. Discount from Block 4 Worksheet	75%
K. Funding Commitment Request (I times J)	\$714,473.10

To:		
Calculations	Revised Amount for QMOE Service (FRN 2062329)	New FRN for OC3 and T1 Service
A. Monthly charges (total amount per month for service)	\$22,983.98	\$8,461.37
B. How much of the amount in A is ineligible?	\$937.75	\$345.22
C. Eligible monthly pre-discount amount (A minus B)	\$22,046.23	\$8,116.15
D. Number of months service provided in funding year	12	12
E. Annual pre-discount amount for eligible recurring charges (C x D)	\$264,554.76	\$97,393.80
F. Annual non-recurring charges	\$300,000.00	0
G. How much of the amount in F is ineligible?	\$0.00	\$0.00
H. Annual eligible pre-discount amount for non-recurring charges (F minus G)	\$300,000.00	\$0.00
I. Total funding year pre-discount amount (E + H)	\$564,554.76	\$97,393.80
J. Discount from Block 4 Worksheet	75%	75%
K. Funding Commitment Request (I times J)	\$423,416.07	\$73,045.35
SPIN:	143001157	143005231

You will notice that the service substitution will result in a reduction of the overall commitment from \$714,473.10 to \$496,461.42 and we authorize you to cancel the difference of \$218,011.68.

I certify:

- that the substituted products or services have the same functionality as that contained in the original proposal,
- that the substitution does not violate any contract provisions or state or local procurement laws,
- that the substitution does not result in an increase in the percentage of ineligible services or functions,
- that the requested change is consistent with the scope of the establishing FCC Form 470, including any Requests for Proposal for the original services.
- all SPIN changes requested in this letter are allowed under all applicable state and local procurement rules
- the SPIN changes are allowable under the terms of the contract, if any, between the applicant and its original service provider
- the applicant has notified its original service provider of its intent to change service providers.

Please direct questions to our E-rate consultant, Andy Eisley of E-Rate Central, at ae.review@e-ratecentral.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'JH' followed by a long horizontal stroke.

Jeff Harris
Director of Technical Support Services



Schools and Libraries Division

ADMINISTRATOR'S DECISION ON SERVICE SUBSTITUTION REQUEST

April 06, 2012

Jeff Harris
Las Cruces Public Schools
505 South Main
Suite 249, Room 150
Las Cruces, New Mexico 88001

Form 471 Application Number: 737265

Dear Jeff Harris,

This letter is your notification that the FCC Form 471, *Services Ordered and Certification Form* you submitted for **Minor Modifications** was received and is not approved. You are not authorized to make the changes identified in your submission.

FRN(s): 2062329

Decision: Not Approved

Your request is not approved for the following reason(s):

- The service substitution request was received or postmarked after the deadline for submitting requests – which is the **last day to receive service** for that FRN – i.e., June 30 of the relevant Funding Year for recurring services.

Please keep this letter for your records. This is the only notification you will receive indicating the processing of the above-submitted form.

If you have any questions regarding the above information, please write to us at "Schools and Libraries Division - Correspondence Unit, 30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685"

TO APPEAL THIS DECISION

If you wish to appeal a decision in this letter, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - appellant name,

- applicant or service provider name, if different than appellant,
 - applicant BEN and service provider SPIN,
 - application or form number as assigned by the USAC
 - Funding Request Number(s) (FRNs) you are appealing if provided in the letter,
 - Name of letter and funding year – both are located at the top of the letter, and
 - the exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
 4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
 5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.